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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
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12 MICHAEL HILL,

13 Petitioner,

14 v.

15 MICHAEL MARTEL,¹ Acting Warden of
16 San Quentin State Prison,

17 Respondent.

Case Number 4-94-cv-641-CW

DEATH-PENALTY CASE

ORDER REGARDING COMPETENCY
EVALUATIONS

18 The Court must determine whether Petitioner is competent to
19 assist in his federal habeas proceedings. The Court has reviewed
20 the briefs and psychological evaluations. The Court orders as
21 follows.

22 I

23 In Rohan v. Woodford, the Court of Appeals for the Ninth
24 Circuit held that a condemned prisoner "has a statutory right to
25 competence in his federal habeas proceedings." 334 F.3d 803, 817
26 (9th Cir. 2003). "[W]here an incompetent capital habeas
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28 ¹ Michael Martel is automatically substituted for Vince Cullen as
Respondent pursuant to Federal Rule of Civil Procedure 25(d).

1 petitioner raises claims that could benefit from his ability to
2 communicate rationally," federal habeas proceedings "must be
3 stayed until [the petitioner] is competent." Id. at 819. The
4 "relevant question" to determine competence in the federal habeas
5 context is "whether [the petitioner] now has the capacity to
6 understand his position and to communicate rationally with
7 counsel." Id.

8 II

9 In the present action, the Court found that there was
10 "substantial evidence" that Petitioner suffered from delusions
11 that rendered him incompetent. Hill v. Ayers, No. 4-94-cv-641-
12 CW, 2008 WL 683422, at *1 (N.D. Cal.). Accordingly, the Court
13 directed that Petitioner "be examined by mental-health experts to
14 determine his competence." Id. at *2.

15 Petitioner's expert, Dr. Karen Franklin, interviewed
16 Petitioner on November 12, 2008, and issued a forensic
17 psychological evaluation of Petitioner shortly thereafter. (Doc.
18 No. 286.) Dr. Franklin determined that Petitioner met the
19 diagnostic criteria for Delusional Disorder (Persecutory and
20 Grandiose Types). (Id. at 8); see also Am. Psychiatric Ass'n,
21 Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR
22 (4th ed. text rev. 2000). Some of Petitioner's delusions were
23 relatively innocuous, such as his beliefs that Oprah Winfrey was
24 his girlfriend, that he had won the Nobel Peace Prize, and that
25 he owned the Bank of Fat Michael Hill, with 800 branches. (Doc.
26 No. 286 at 7.) However, many of his

27 delusional beliefs are inextricably
28 intertwined with his current legal case. He
believes that he has won his appeal and been
pardoned by the governor. At the present

1 time, he holds this belief with an intense,
2 unshakable degree of conviction.
3 Furthermore, although he states that he could
4 set aside this knowledge and continue to work
5 with his attorneys on an appeal, the basis
6 for appeal that he focuses on is not
7 rational. Rather, it is part of his
8 delusional belief system – that his attorney
9 was intentionally working for the
10 prosecution, concealing exculpatory evidence,
11 and ignoring his successful direct appeal.

12 (Id. at 10.) In light of "the centrality and intensity of his
13 delusional beliefs," Dr. Franklin opined that Petitioner was
14 incompetent "due to his mental disorder." (Id.) However, she
15 concluded by

16 recommend[ing] a followup evaluation to
17 determine whether his delusional belief
18 system has subsided or become encapsulated to
19 the point that he is competent to rationally
20 assist his attorney in his appeal.
21 Delusional Disorder often waxes and wanes
22 over time, and indeed this has occurred with
23 [Petitioner] in the past. [Petitioner] could
24 regain his competency without a complete
25 disappearance of his persecutory and
26 grandiose delusions, so long as these beliefs
27 subside in intensity and centrality such that
28 he recovers a factual understanding of his
case and a rational ability to assist his
attorney on his own behalf.

(Id. at 12.)

1 The Court subsequently issued an Order Setting Procedures
2 for Competency Evaluation. (Doc. No. 295.) Pursuant to that
3 order, Respondent's expert, Dr. Paul Good, interviewed Petitioner
4 on August 18, 2010. (Doc. No. 299 at 3; Docs. Nos. 302-03.) Dr.
5 Good issued his report on October 14, 2010. (Doc. No. 299.)

6 During their interview, Petitioner told Dr. Good "that Oprah
7 was not his girlfriend, that he was not a Nobel Peace Prize
8 winner, and that there was no [Blank of Michael Hill with 800
9 branches," and Petitioner even laughed "in acknowledgment of the

1 absurdity of these ideas." (Id. at 8.) However, Petitioner
2 refused to discuss his legal matters in any significant way or
3 even to answer many of the questions posed by Dr. Good despite
4 the efforts of Petitioner's counsel to have him do so.² (Id. at
5 7, 10, 11.) Petitioner did indicate that he continued to believe
6 that "he was lied to by his attorneys," (id. at 10), but not
7 "that his attorney is conspiring with the prosecution, concealing
8 exculpatory evidence or ignoring his successful appeal," (id. at
9 12).

10 Dr. Good believed that Petitioner's refusal to discuss
11 "issues which were a matter of public record, and on which his
12 attorney gave him freedom to respond . . . seemed irrational."
13 (Id.; see also id. at 12-13 (Petitioner's "resistance to
14 discussing certain issues with me, even after his attorney
15 assured him that it would not jeopardize his appeal, may suggest
16 a substrate of paranoia.")) Dr. Good's "sense was that
17 [Petitioner] still has paranoid suspicions and that these could
18 become problematic under periods of stress. [His] capacity to
19 make fine distinctions is limited and his judgment is adequate
20 but fragile." (Id. at 7-8; see also id. at 11 ("a residue of
21 paranoia lingered in his mind")).)

22 Dr. Good found that "it appears that [Petitioner's]
23 Delusional disorder is in remission." (Id. at 12.) Dr. Good
24 stated, "At this point, I do not believe [Petitioner's]
25 Delusional disorder in remission is substantially affecting his
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27 ² Pursuant to the Court's Order Setting Procedures for Competency
28 Evaluation, (Doc. No. 295 at 3), one of Petitioner's attorneys was
available on site during Dr. Good's interview to consult with
Petitioner.

capacity.” (Id. (quotation marks omitted).) Although Dr. Good was not completely confident in his findings, he opined that Petitioner had regained his competency. “However,” Dr. Good concluded, “his competency will remain fragile.” (Id. at 14.) Indeed,

As Dr. Franklin pointed out in her report, Delusional disorders can wax and wane, and thus it is hard to know how [Petitioner] will fare going forward. [Petitioner] is still vulnerable to a decompensation in which his delusional ideas hijack his thinking processes and again make him psychotic. In such a case, his mental disorder would substantially undermine his competency.

(Id. at 13.)

III

It is undisputed, and the Court finds, that Petitioner was incompetent when Dr. Franklin interviewed him in 2008. It is also undisputed, and the Court finds, that Petitioner's condition improved significantly by the time Dr. Good interviewed him in 2010. Indeed, Petitioner may well have regained his competency by 2010. Of significant import in this regard is Dr. Good's finding that Petitioner no longer held at least some of the delusional beliefs that Dr. Franklin described as "inextricably intertwined with his current legal case," such as the beliefs that Petitioner's attorney conspired with the prosecution, concealed exculpatory evidence, and ignored his successful appeal. Thus, there is substantial evidence that Petitioner is now competent.

Yet substantial evidence of Petitioner's competency is not necessarily sufficient to establish that Petitioner has in fact regained his competency. Cf. *Hill*, 2008 WL 683422, at *2 ("Of

1 course, the [substantial] evidence that suggests that Petitioner
2 may be incompetent is insufficient to establish that Petitioner
3 is in fact incompetent."). Thus, like Dr. Good, the Court cannot
4 state with a great degree of confidence that Petitioner has
5 regained his competency. This is because Petitioner's refusal to
6 discuss his legal issues with Dr. Good in any significant way –
7 apparently as a result of his continuing paranoia – prevented Dr.
8 Good from gaining sufficient insight into Petitioner's
9 understanding of his position. But Petitioner's understanding of
10 his position is central to any determination of his competency.
11 As Petitioner's counsel notes, the Court should have before it
12 clearer evidence regarding "whether Petitioner is able to
13 generally identify the claims that he is making, and whether he
14 is able to discuss the general categories of information . . .
15 that are necessary for him to communicate to his counsel." (Doc.
16 No. 305 at 10-11.)

17 However, Petitioner's counsel's suggestion of further
18 discussion between Petitioner and Dr. Good to attempt to develop
19 sufficient information, (*id.* at 10), is not well taken. Dr. Good
20 already has made valiant efforts – with Petitioner's counsel's
21 assistance – in that regard, yet he was unable to do so. It
22 seems more likely that Petitioner's own expert, Dr. Franklin,
23 might succeed, as it does not appear that Petitioner's paranoia
24 necessarily extends to Dr. Franklin. Accordingly, Petitioner's
25 counsel may arrange for Dr. Franklin to examine Petitioner to
26 develop additional evidence that would assist the Court in

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1 determining Petitioner's competency.³ Petitioner's counsel may
2 also submit additional evidence, such as medical records as well
3 as appropriate declarations, under seal if necessary, regarding
4 their own interactions with Petitioner. See Nash, 581 F.3d at
5 1058 ("habeas counsel has filed a sealed declaration outlining
6 her own difficulties in communicating with" the petitioner); (see
7 also Doc. No. 306 at 4 ("[R]espondent can[]not help but note the
8 absence of any assertion that [] Petitioner is not presently
9 rationally communicating with his attorney or is unable to assist
10 counsel in the preparation of his Traverse.")). However, if
11 Petitioner's counsel choose not to do so, for whatever reason,
12 the Court will conclude based on the current state of the record
13 that Petitioner is now competent. In that event, Petitioner's
14 counsel should notify the Court of any material change in
15 Petitioner's condition that may indicate that he again becomes
16 incompetent.⁴

18 ³ Respondent correctly points out that Petitioner elected not to
19 have Dr. Franklin examine Petitioner following the examination by Dr.
20 Good. (Doc. No. 306 at 3, 4.) Respondent argues that this "decision
21 seems a clear indication of counsel's satisfaction with the
22 sufficiency of the record." (Id.) However, this Court's Order
23 Setting Procedures for Competency Examination authorized
24 contemporaneous examinations by Drs. Good and Franklin, (Doc. No. 295
25 at 3; see also id. at 6), not, as Respondent claims, a later
26 examination by Dr. Franklin "to cure any of the alleged deficiencies
27 in the assessments for competency used by the State's experts," (Doc.
28 No. 306 at 3.) Moreover, the Court specifically ordered that
Petitioner "shall be permitted to object in this Court to the scope of
the examination conducted [by Dr. Good], prior to any decision by this
Court on the question of his present competence." (Doc. No. 295 at
5.)

18 ⁴ The Court is mindful of one of Petitioner's attorney's
27 unavailability as set forth in the Notice of Unavailability, (Doc. No.
308), as well as both of Petitioner's attorneys' obligations in
28 Johnson v. Martel, No. 3-98-cv-4043-SI, and it will take these
considerations into account in scheduling matters in the instant
action.

IV

Accordingly, and good cause therefor appearing, within sixty days of the entry of present order, Petitioner shall file a statement indicating whether Dr. Franklin will reexamine Petitioner. Any such examination shall be conducted within thirty days of the filing of such statement, subject to counsel's availability and pursuant to the Court's prior Order Setting Procedures for Competency Examination, (Doc. No. 295). Petitioner's counsel shall file Dr. Franklin's evaluation and any additional declarations or other evidence no later than thirty days from the date of her evaluation. If Petitioner does not choose to arrange for a further evaluation by Dr. Franklin, the Court will rule on Petitioner's current competency based on the materials submitted.

IT IS SO ORDERED.

DATED: 4/21/2011


CLAUDIA WILKEN
United States District Judge